

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: JUNE 11, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: ABEYANCE - VAR-33768 - APPLICANT/OWNER: BASHIR AFZALI**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. Approval of and conformance to the Conditions of Approval for Variance (VAR-33771) and Site Development Plan Review (SDR-33767) shall be required, if approved.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a request for a Variance to allow a 20-foot rear yard setback where Title 19.08.060 Residential Adjacency Standards require 35 feet on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue. Associated requests have also been submitted for a Rezoning (ZON-33765) from R-E (Residence Estates) to C-1 (Limited Commercial), a Variance (VAR-33771) to allow 32 parking spaces and zero loading spaces where 36 parking spaces and one loading space are required, and a Site Development Plan Review (SDR-33767) for a proposed 6,232 square-foot commercial building with Waivers of Title 19.12.040 Perimeter Landscape Buffer Standards to allow buffers of 10 feet where 15 feet is required along the west perimeter and five feet where eight feet is required along the north and south perimeters. The applicant is also requesting, as part of the Site Development Plan Review, an Exception to allow no parking lot landscape islands and trees where four of each is required.

Staff is recommending denial of this request as it would effectively eliminate the additional buffering area that Residential Adjacency standards are meant to provide for the protection of residential properties from the adjacent commercial development.

**BACKGROUND INFORMATION**

<i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i>	
12/01/04	The City Council approved a request for Rezoning (ZON-5222) from R-E (Residence Estates) to C-1 (Limited Commercial) on 0.58 acres located between 1000-1100 Martin L. King Boulevard. The Planning Commission recommended approval. The Resolution of Intent expired on 12/01/06.
12/01/04	The City Council denied requests for a Site Development Plan Review (SDR-5223) with a Waiver of perimeter buffering and landscaping standards and a Special Use Permit (SUP-5225) for a proposed Smog Check and Car Wash, Self Service on 0.58 acres located between 1000-1100 Martin L. King Boulevard. The Planning Commission recommended approval.

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04/23/09	The City Council, at the request of the applicant, abeyed requests for a Rezoning (ZON-33765) from R-E (Residence Estates) to C-1 (Limited Commercial); a Variance (VAR-33768) to allow a 20-foot rear yard setback where Residential Adjacency standards require 35 feet; a Variance (VAR-33771) to allow 32 parking spaces and zero loading spaces where 36 parking spaces and one loading space are required; and a Site Development Plan Review (SDR-33767) for a proposed 6,232 square-foot commercial building with Waivers of the perimeter landscape buffer standards to allow buffers of 10 feet where 15 feet is required along the west perimeter and five feet where eight feet is required along the north and south perimeters and a Waiver of the building placement and orientation standards on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue.
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***Related Building Permits/Business Licenses***

There are no related building permits or business licenses associated with the subject site.

***Pre-Application Meeting***

12/16/08	A pre-application meeting was held to discuss the submittal requirements for a Rezoning and Site Development Plan Review, as well as required Variances for setbacks and parking requirements.
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***Neighborhood Meeting***

A neighborhood meeting was neither required nor held for this request.

***Field Check***

03/19/09	A field check was conducted by staff. The subject site is an undeveloped parcel. There is an unpermitted chain link fence along the front of the lot, as well as some debris.
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***Details of Application Request***

***Site Area***

Gross Acres	0.58 Acres
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Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Undeveloped	C (Commercial)	R-E (Residence Estates)
North	Shopping Center	C (Commercial)	C-1 (Limited Commercial)
South	Retail Shops	C (Commercial)	C-1 (Limited Commercial)
East	Single-Family Residence	C (Commercial)	R-E (Residence Estates)

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West	Single-Family Residences	R (Rural Density Residential)	R-E (Residence Estates)
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<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Area Plan</b>			
West Las Vegas Plan	X		Y
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Purpose and Overlay Districts</b>			
A-O Airport Overlay District (140 Feet)	X		Y
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>	X		Y*
<b>Development Impact Notification Assessment</b>		X	N/A
<b>Project of Regional Significance</b>		X	N/A

*\*The subject site is within a Rural Preservation Overlay District buffer area. The east side of Martin L. King Boulevard has a General Plan designation of C (Commercial), and falls within the Las Vegas Redevelopment Plan area. In addition, Martin L. King Boulevard is in the process of being widened to 100 feet, which meets the Title 19.06.150(B)(2) exception to maintaining the rural character of the area. These growth and development factors provide cause for this request to be considered for approval pursuant to Title 19.06.150(C).*

## **DEVELOPMENT STANDARDS**

*Pursuant to Title 19.08, the following standards apply:*

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Lot Size	N/A	25,164 SF	Y
Min. Lot Width	100 Feet	190 Feet	Y
Min. Setbacks			
• Front	20 Feet	75 Feet	Y
• Side	10 Feet	10 Feet	Y
• Corner	15 Feet	N/A	N/A
• Rear	20 Feet	20 Feet	Y
Max. Lot Coverage	50%	25%	Y
Max. Building Height	N/A	15 Feet	Y

<i>Residential Adjacency Standards</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
3:1 proximity slope	One story / 15 Feet	15 Feet	Y
Adjacent development matching setback	35 Feet (Rear)	20 Feet	N*
Trash Enclosure	50 Feet	65 Feet	Y

*\*The applicant has submitted this request for a Variance to allow a 20-foot setback where Residential Adjacency requires 35 feet. This represents a 43% deviation from the standard.*

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## **ANALYSIS**

This is a request for a Variance to allow a 20-foot rear yard setback where Title 19.08.060 Residential Adjacency Standards require 35 feet on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue. The request represents a 43% deviation from the standard. Residential Adjacency standards have been adopted to protect residentially zoned properties from the negative impacts that adjacent commercial development may have on them. The standards are intended to provide buffers in order to minimize these impacts so that commercial developments that occur in proximity to residential uses are compatible and can be operated in a harmonious manner with the residential uses. Staff is recommending denial of this request as it would effectively eliminate the additional buffering areas that Residential Adjacency standards are meant to provide, and the applicant has created a self-imposed hardship by proposing a commercial development that does not meet the minimum Residential Adjacency standards of Title 19.08.060.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing a commercial development that does not meet the minimum Residential Adjacency standards of Title 19.08.060. Alternative site design, coupled with a reduction in the floor area of the proposed development, would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

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**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 21

**ASSEMBLY DISTRICT** 6

**SENATE DISTRICT** 4

**NOTICES MAILED** 161

**APPROVALS** 1

**PROTESTS** 3